INDEX.

ADMIRALTY.

1. When a vessel, libelled for smuggling and for violations of the Chinese Exclusion Act, is discharged on giving the bond required by law, it may be again libelled in another district for similar offences, alleged to have been committed prior to the offences charged in the first libel; but if both suits proceed to judgment, there can be but one forfeiture of the vessel. *The Haytian Republic*, 118.
2. On the 31st day of July, 1891, proceedings were commenced in the Supreme Court of the State of New York for the voluntary dissolution of a Steam Tow Boat Company, a corporation organized under the laws of that State, and an order was made on that day restraining creditors from bringing action and requiring all to show cause, on the 16th day of November, 1891, before a referee, why the prayer of the petitioner should not be granted. An order was made at the same time for the appointment of a receiver, which required him to give bonds before entering on the duties of his office. On the 1st of August, 1891, in the forenoon of that day, these orders were entered and the papers filed in the office of the clerk of the court. On the afternoon of the same day, which was Saturday, and on Monday, August 3, libels in admiralty were filed in the District Court of the United States for the Eastern District of New York to enforce maritime liens against six of the vessels of said Tow Boat Company's fleet. On the 1st of August the marshals for the district seized and took into custody three of the six, and on the 3d of August did likewise with the other three. On the 4th of August the receiver filed his official bond, duly approved, and entered upon the discharge of his duties. On the same day he went to take possession of the six vessels and found them in the custody of the marshal. Thereupon, on his motion, process issued against the several libellants, to bring them before the Supreme Court of the State, where, after hearing, they were enjoined from taking any further proceedings on their libels. This judgment of the Supreme Court being affirmed by the Court of Appeals, and the judgment of the latter court being remitted to the Supreme Court and entered there as its judgment, the libellants sued out a writ of error to this court. *Held*, that the state court had no jurisdiction *in personam* over the libellants as holders of maritime

liens when the libels were filed; that the question of jurisdiction was, as the case stood, one for the District Court to decide in the first instance; that the District Court had jurisdiction; and that the judgment under review was in effect an unlawful interference with proceedings in that court. *Moran* v. *Sturges*, 256.

3. Though courts, for the purpose of protecting their jurisdiction over persons and subject-matter, may enjoin parties who are amenable to their process, and subject to their jurisdiction, from interference with them in respect of property in their possession or identical controversies therein pending, by subsequent proceedings as to the same parties and subject-matter in other courts of concurrent jurisdiction; and though, where property is in the actual possession of one court of competent jurisdiction, such possession cannot be disturbed by process out of another court; yet, upon the facts disclosed in this record, the District Court was not required to stay its hand until the termination of the proceedings in the state court, that court being without jurisdiction as to maritime liens, and being incapable of displacing them. *Ib.*
4. The District Court in a libel in admiralty for collision, having adjudged both vessels to be in fault, and only one having appealed, the only question here is as to the fault of the appealing vessel; and on the evidence the court holds it to have been in fault. *The Des Moines*, 584.
5. On a question purely of fact the court finds the St. John in fault, and decrees accordingly. *The St. John*, 586.
6. On the facts detailed in the opinion, the court holds that there was no contributory negligence on the part of the libellant. *The Adelia*, 593.
7. On a review of the facts it is held that the Northfield was free from fault and the decree below is affirmed. *Hutchinson* v. *The Northfield*, 629.
8. By the terms of a charter party to the United States, the owner of a vessel undertook to keep her tight, staunch, strong and sound, and her machinery, boilers and everything pertaining to her in perfect working order, and to provide her with everything necessary for efficient sea-service. The government undertook to deliver the vessel to the owner in New York at the expiration of the charter party in as good condition as she was at the signing of it, ordinary wear and tear, damage by the elements, bursting of boilers, breaking of machinery excepted. The vessel was injured and sunk by a marine risk assumed by the charterer while engaged in the transportation of stores and men in the waters of North Carolina. She was raised and taken to New Berne, where she was temporarily repaired by the government; but, being found out of order, was discharged at Port Royal by the government, and taken to New York by the owner. *Held*, that by reason of the failure of the owner to keep the vessel tight, staunch,

strong and sound, the government was relieved from its liability to deliver the vessel to the owner in New York. *Strong* v. *United States*, 632.

9. The findings of fact by the Circuit Court in an admiralty suit are conclusive upon this court. *The Louisville*, 657.

BANKRUPT.

1. The order of the Circuit Court in this case, directing an assignment to the trustees in bankruptcy of the judgment against the oil company on bills transferred by the bankrupt to the appellant, is affirmed. *First National Bank of Cincinnati* v. *Cook*, 628.
2. A decree setting aside a conveyance by a bankrupt to his wife as fraudulent is sustained; but it is also held that a personal decree against her for rents, issues and profits, and for the use and occupation of the premises was error. *Clark* v. *Beecher*, 631.
3. On the facts it is held that the conveyance which is the subject of dispute in this suit was fraudulent under the bankrupt laws. *Woolfolk* v. *Nisbet*, 650.
4. Members of a limited partnership purchased and paid for the interest of one of the members. Subsequently the remaining members became bankrupt. *Held*, that the assignee in bankruptcy had no claim against the outgoing partner as a debtor by reason of this transaction. *Wight* v. *Condict*, 666.

CASES AFFIRMED OR FOLLOWED.

1. The judgment in this case is reversed on the authority of *Covington & Cincinnati Bridge Co.* v. *Kentucky*, 154 U. S. 204. *Covington & Cincinnati Railroad, Transfer & Bridge Co.* v. *Kentucky*, 224.
2. *Reagan* v. *Farmers' Loan and Trust Co.*, 154 U. S. 362, affirmed, followed and applied to the facts in this case. *Reagan* v. *Mercantile Trust Co.*, 413.
3. *Reagan* v. *Farmers' Loan and Trust Co.*, 154 U. S. 362, followed. *Reagan* v. *Mercantile Trust Co.*, 418; *Reagan* v. *Farmers' Loan & Trust Co.*, 420.
4. *United States* v. *Philadelphia*, 11 How. 609, followed. *United States* v. *Harrison*, 531; *Same* v. *Carrère*, 532.
5. *Woods* v. *Lawrence County*, 1 Black, 386, affirmed and followed. *Richardson* v. *Lawrence County*, 536.
6. *McGuire* v. *Massachusetts*, 3 Wall. 387, followed. *Hammond* v. *Massachusetts*, 550.
7. *Van Allen* v. *Assessors*, 3 Wall. 573, followed. *Churchill* v. *Utica*, 550; *Williams* v. *Nolan*, 551.
8. *Brown* v. *Bass*, 4 Wall. 262, followed. *Brown* v. *Johnson*, 551.
9. *United States* v. *Holliday*, 3 Wall. 407, followed. *United States* v. *Mayrand*, 552.

10. *Green* v. *Van Buskirk*, 5 Wall. 307, followed. *Tillinghast* v. *Van Buskirk*, 553; *Same* v. *Same*, 557.
11. A petition for a writ of mandamus is denied on the authority of *Minnesota Co.* v. *St. Paul Co.*, 6 Wall. 742. *Ex parte Milwaukee & Minnesota Railroad Co.*, 554.
12. Dismissed on the authority of *Georgia* v. *Stanton*, 6 Wall. 50, and *Georgia* v. *Grant*, 6 Wall. 241. *Mississippi* v. *Stanton and Grant*, 554.
13. *Gaines* v. *New Orleans*, 6 Wall. 642, followed. *Gaines* v. *Lizardi*, 555.
14. *United States* v. *Hartwell*, 6 Wall. 385, followed. *United States* v. *Cook*, 555.
15. *Union Insurance Co.* v. *United States*, 6 Wall. 759, followed. *United States* v. *Bales of Cotton*, 556.
16. *Williamson* v. *Suydam*, 6 Wall. 723, followed. *Williamson* v. *Moore*, 557.
17. *Bronson* v. *Rodes*, 7 Wall. 229, followed. *Dutton* v. *Palairet*, 563.
18. *United States* v. *Adams*, 7 Wall. 463, followed. *United States* v. *Mowry*, 564; *Same* v. *Morgan*, 565; *Same* v. *Burton*, 566.
19. *Ex parte Zellner*, 9 Wall. 244, followed. *Ex parte Pargoud*, 567.
20. *Railroad Co.* v. *Fremont County*, 9 Wall. 89, followed. *Burlington & Missouri River Railroad Co.* v. *Mills County*, 568.
21. *Willard* v. *Presbury*, 14 Wall. 676, followed. *Willard* v. *Willard*, 568.
22. *Butz* v. *Muscatine*, 8 Wall. 575, followed. *United States* v. *Burlington*, 568.
23. *Flanders* v. *Tweed*, 9 Wall. 425, followed. *Flanders* v. *Tweed*, 569.
24. *Supervisors* v. *Durant*, 9 Wall. 415, followed. *Supervisors* v. *Durant*, 571; *Washington County* v. *Mortimer*, 571.
25. *Knox County* v. *Aspinwall*, 21 How. 539, and *City* v. *Lamson*, 9 Wall. 477, followed. *Kenosha* v. *Lamson*, 573.
26. *Little* v. *Herndon*, 10 Wall. 26, followed. *Long* v. *Patton*, 573; *Underhill* v. *Herndon*, 574; *Sturtevant* v. *Herndon*, 575; *Underhill* v. *Patton*, 575.
27. *United States* v. *Anderson*, 9 Wall. 56, followed. *United States* v. *Pollard*, 577.
28. *Wolcott* v. *Des Moines Co.*, 5 Wall. 681, followed. *Riley* v. *Welles*, 578.
29. *Ex parte Graham*, 10 Wall. 541, followed. *Ex parte Waples*, 579.
30. *Garnett* v. *United States*, 11 Wall. 256, followed. *Garnett* v. *United States*, 579.
31. *Smith* v. *Stevens*, 10 Wall. 321, followed. *Stevens* v. *De Aubrie*, 580.
32. *United States* v. *Hodson*, 10 Wall. 395, followed. *United States* v. *Hodson*, 580; *Same* v. *Mynderse*, 580.
33. *Bethell* v. *Demaret*, 10 Wall. 537, followed. *Cousin* v. *Generes*, 581.
34. *Ex parte McNiel*, 13 Wall. 236, followed. *Ex parte Loud*, 582.
35. *Sevier* v. *Haskell*, 14 Wall. 12, followed. *Jacoway* v. *Denton*, 583.
36. *Pico* v. *United States*, 2 Wall. 279, and *Peralta* v. *United States*, 3 Wall. 434, followed. *Diaz* v. *United States*, 590.
37. *Bartemeyer* v. *Iowa*, 18 Wall. 129, followed. *Norton* v. *Jamison*, 591.

38. *Oulton* v. *Savings Institution*, 17 Wall. 109, followed. *Oulton* v. *San Francisco Savings Union*, 591.
39. *Olcott* v. *Supervisors*, 16 Wall. 678, followed. *Humbird* v. *Jackson County*, 592.
40. *Tomlinson* v. *Jessup*, 15 Wall. 454, followed. *Charleston* v. *Jessup*, 592.
41. *State* v. *Stoll*, 17 Wall. 425, followed. *South Carolina ex rel. Robb* v. *Gurney*, 593.
42. *Railroad Co.* v. *Fuller*, 17 Wall. 561, followed. *Chicago & Northwestern Railway Co.* v. *Fuller*, 595.
43. *The Confiscation Cases*, 20 Wall. 92, followed. *Kenner* v. *United States*, 595; *United States* v. *Six Lots*, 596.
44. *Habich* v. *Folger*, 20 Wall. 1, followed. *Priest* v. *Folger*, 597.
45. *Bigelow* v. *Forrest*, 9 Wall. 339, and *Day* v. *Micou*, 18 Wall. 156, followed. *Brugere* v. *Slidell*, 598.
46. *Northwestern Union Packet Co.* v. *Clough*, 21 Wall. 317, followed. *Northwestern Union Packet Co.* v. *Viles*, 608.
47. *Chambers County* v. *Clews*, 21 Wall. 317, followed. *Lee County* v. *Clews*, 609.
48. *Schulenberg* v. *Harriman*, 21 Wall. 44, followed. *Schow* v. *Harriman*, 609.
49. *Cary* v. *San Francisco Savings Union*, 22 Wall. 38, followed. *Oulton* v. *Savings & Loan Society*, 615.
50. *Barnes* v. *Railroad Co.*, 17 Wall. 294, and *Stockdale* v. *Atlantic Ins. Co.*, 20 Wall. 323, followed. *Oulton* v. *California Insurance Co.*, 615.
51. *Haycraft* v. *United States*, 22 Wall. 81, followed. *Lane* v. *United States*, 615.
52. *Bailey* v. *Clark*, 21 Wall. 284, followed. *Bailey* v. *Work*, 616.
53. *Blake* v. *National Banks*, 23 Wall. 307, followed. *Blake* v. *Fourth National Bank*, 616.
54. *Gregory* v. *McVeigh*, 23 Wall. 294, followed. *Windsor* v. *McVeigh*, 617.
55. *Loan Association* v. *Topeka*, 20 Wall. 655, followed. *Commercial Bank* v. *Iola*, 617.
56. *Mining Co.* v. *Boggs*, 3 Wall. 304, followed. *Crary* v. *Devlin*, 619.
57. *Atherton* v. *Fowler*, 91 U. S. 143, followed. *Atherton* v. *Fowler*, 620.
58. *Upton* v. *Tribilcock*, 91 U. S. 45; *Sanger* v. *Upton*, 91 U. S. 56; and *Webster* v. *Upton*, 91 U. S. 65, followed. *Herhold* v. *Upton*, 621.
59. Affirmed upon the authority of *Bigelow* v. *Forrest*, 9 Wall. 339; *Day* v. *Micou*, 18 Wall. 156; and *Wallach* v. *Van Riswick*, 92 U. S. 202. *Davies* v. *Slidell*, 625.
60. *Welton* v. *Missouri*, 91 U. S. 275, followed. *Morrill* v. *Wisconsin*, 626.
61. *Van Norden* v. *Benner*, 131 U. S. App. cxlv, followed. *Van Norden* v. *Washburn*, 627.
62. *Ray* v. *Norseworthy*, 23 Wall. 128, followed. *Haynes* v. *Pickett*, 627.

63. *McCready* v. *Virginia*, 94 U. S. 391, followed by stipulation of parties. *McCready* v. *Virginia*, 628.
64. *Davidson* v. *New Orleans*, 96 U. S. 97, followed. *Corry* v. *Campbell*, 629.
65. *Railroad Co.* v. *Vance*, 96 U. S. 450, followed. *Indianapolis & St. Louis Railroad* v. *Vance*, 638.
66. *Thompson* v. *Butler*, 95 U. S. 694, followed. *Northwestern Life Ins. Co.* v. *Martin*, 640.
67. *Claflin* v. *Houseman*, 93 U. S. 130, followed. *Wilson* v. *Goodrich*, 640.
68. *Burke* v. *Miltenberger*, 19 Wall. 579, followed. *Burke* v. *Tregre*, 641.
69. *Commissioners* v. *Sellew*, 99 U. S. 624, followed. *Leavenworth* v. *Kinney*, 642.
70. *Arthur* v. *Davies*, 96 U. S. 135, and *Arthur* v. *Rheims*, 96 U. S. 143, followed and applied. *Faxon* v. *Russell*, 644.
71. *County of Macon* v. *Shores*, 97 U. S. 272, and *Smith* v. *Clark County*, 54 Missouri, 59, followed. *Dallas County* v. *Huidekoper*, 654.
72. *Dallas County* v. *Huidekoper*, 154 U. S. Appx. 654, followed. *Dallas County* v. *Huidekoper*, 655.
73. *Railroad Co.* v. *Grant*, 98 U. S. 398, followed. *Bank of the Republic* v. *Millard*, 656.
74. *Removal Cases*, 100 U. S. 457, followed. *Gage* v. *Carraher*, 656.
75. *Railroad Company* v. *Blair*, 100 U. S. 661, followed. *Gurnee* v. *Blair*, 659.
76. *Carroll* v. *Dorsey*, 20 How. 204, followed. *Sea* v. *Connecticut Mutual Life Ins. Co.*, 659.
77. *Cowdrey* v. *Vandenburgh*, 101 U. S. 572, followed. *Cowdrey* v. *Vandenburgh*, 659.
78. *National Bank* v. *Graham*, 100 U. S. 699, followed. *Whitney* v. *First Nat. Bank of Brattleboro*, 664.
79. *Richmond Mining Co.* v. *Eureka Mining Co.*, 103 U. S. 839, followed. *Richmond Mining Co.* v. *Eureka Mining Co.*, 664.
80. *Scotland County* v. *Thomas*, 94 U. S. 682, and *Schuyler County* v. *Thomas*, 98 U. S. 169, followed. *Benton County* v. *Rollens*, 665.
81. *Green* v. *Fisk*, 103 U. S. 518, followed. *Green* v. *Fisk*, 668.
82. *Roberts* v. *Bolles*, 101 U. S. 119, followed. *Roberts* v. *Bolles*, 670.
83. *Railway Co.* v. *Heck*, 102 U. S. 130, followed. *Levy* v. *Dangel*, 671.
84. *Hecht* v. *Boughton*, 105 U. S. 235, followed. *Bonnifield* v. *Price*, 672; *Upton* v. *Mason*, 675; *Upton* v. *Steele*, 675; *Kahn* v. *Hamilton*, 677.
85. *United States* v. *Rosenburgh*, 7 Wall. 580, and *United States* v. *Avery*, 13 Wall. 251, followed. *United States* v. *Canda*, 674.
86. *Ralls County Court* v. *United States*, 105 U. S. 235, followed. *Ralls County Court* v. *United States*, 675.
87. *United States* v. *Kaufman*, 96 U. S. 567, followed. *United States* v. *Barnett*, 676.
88. *Steines* v. *Franklin County*, 14 Wall. 15, followed. *Grame* v. *Mutual Assurance Society*, 676.

89. *Thompson* v. *Perrine*, 106 U. S. 589, followed. *Thompson* v. *Perrine*, 677.
90. *Badger* v. *Ranlett*, 106 U. S. 255, followed. *Badger* v. *Ranlett*, 677.
91. *Chicago & Alton Railroad* v. *Wiggins Ferry Co.*, 108 U. S. 18, followed. *Chicago & Alton Railroad* v. *Wiggins Ferry Co.*, 678.

CASES DECIDED ON THE FACTS OR WITHOUT OPINION.

1. Affirmed on the authority of several cases of a similar character. *Mineral Point* v. *Lee*, 552.
2. There being no error, the judgment of the court below is affirmed. *Supervisors* v. *Durant*, 576.
3. There being no error, the judgment is affirmed. *Plant* v. *Stovall*, 584.
4. The decree below is affirmed on the facts. *The Eliza Hancox* v. *Langdon*, 618.
5. The proof does not make out a case that calls upon this court to overrule the judgment of the trial court on questions of fact. *Mead* v. *Pinyard*, 620.
6. Affirmed upon the facts. *Mackall* v. *Richards*, 624.
7. The decree below is affirmed upon the facts. *Johansson* v. *Stephanson*, 625.
8. The facts stated in the opinion show that there is not a sufficient amount involved in this case to give this court jurisdiction. *Keogh* v. *Orient Fire Ins. Co.*, 639.
9. On the facts, the decree below is reversed in part, and in part affirmed. *Jaeger* v. *Moore*, 641.
10. The finding of the Supreme Court of the State as to the suspension of General Orders Nos. 60 and 70 is sustained by the evidence. *Burke* v. *Tregre*, 641.
11. In a case of conflicting evidence on a question of fact, the court affirms the decree of the court below. *Case* v. *Marchand*, 642.
12. The judgment of the Court of Claims is affirmed on the facts. *Dold* v. *United States*, 645.
13. On the case made by the pleadings the court will not disturb the judgment below. *North* v. *McDonald*, 649.
14. When the District Court in a State has given a judgment which involves the finding of a fact in dispute, and that judgment is affirmed by the Supreme Court of the State, this court will not disturb the judgment of the latter unless the error be clear. *Lammers* v. *Nissen*, 650.
15. This case presents only a question of fact, which was properly decided in the court below. *Ponder* v. *Delauney*, 651.
16. The court finds the disputed facts in favor of the appellee, and enters a decree accordingly. *Fontaine* v. *McNab*, 652.
17. The judgment of the court below is affirmed on the case presented to this court. *United States* v. *Williams*, 652.

18. This decree is affirmed on the facts on the various points stated in the opinion of the court. *Jouan* v. *Divoll*, 657.
19. This case is reversed because this court is not satisfied that the court below reached a proper conclusion on the facts. *Groat* v. *O'Hare*, 660.
20. Affirmed on the facts. *Seward* v. *Comeau*, 665.
21. Affirmed on the facts. *Hearst* v. *Halligan*, 669.
22. Affirmed on the facts. *Price* v. *Kelly*, 669.
23. Affirmed on the facts. *Glover* v. *Love*, 670.
24. The burden of proving this case is on the appellant, but the weight of the evidence is with the appellee. *Mellon* v. *Delaware, Lackawanna and Western Railroad Co.*, 673.
25. Affirmed on the facts. *Steever* v. *Rickman*, 678.

See EQUITY, 3;
PRINCIPAL AND AGENT, 1, 2.

CASES DISTINGUISHED.

1. *Deffeback* v. *Hawke*, 115 U. S. 392, and *Davis* v. *Weibbold*, 139 U. S. 507, explained and distinguished. *Barden* v. *Northern Pacific Railroad Co.*, 288.
2. *Hayburn's Case*, 2 Dall. 409; *United States* v. *Ferreira*, 13 How. 40; *Todd's Case*, 13 How. 52; *Gordon* v. *United States*, 117 U. S. 697; *In re Sanborn*, 148 U. S. 222, examined and distinguished. *Interstate Commerce Commission* v. *Brimson*, 447.
3. *Bennett* v. *Butterworth*, 8 How. 124, distinguished. *Pittsburgh Locomotive and Car Works* v. *Keokuk National Bank*, 626.

COMMON CARRIER.

1. In the bill of lading of a quantity of cases and bales of goods delivered to the National Steamship Company at Liverpool, and addressed and consigned to C. in New York, it was provided as follows: "Shipped in good order and well conditioned . . . in and upon the steamship called the Egypt . . . bound for New York . . . forty-three cases merchandise . . . being marked and numbered as in the margin, and to be delivered subject to the following exceptions and conditions: . . . The National Steamship Company or its agents or any of its servants are not to be liable for any damage to any goods which is capable of being covered by insurance . . . nor for any claims for loss . . . where the loss occurs while the goods are not actually in the possession of the company. . . . The goods to be taken alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master and deposited at the expense of the consignee, and at his risk of fire, loss or injury in the warehouse provided for that purpose, or in the public store, as the collector of the port of New York shall direct. . . . The United States Treasury having given permission for goods to

remain forty-eight hours on wharf at New York, any goods so left by consignee will be at his or their risk of fire, loss or injury." The Egypt arrived January 31, 1883, was entered at the custom-house at 1.45 P.M. of that day, and, there being no room for her at the pier of the National Company, where the vessels of that company were usually unladen, was taken to the pier of the Inman Company. A collector's permit was given to unload the steamer and to allow the unpermitted cargo to remain on the wharf for forty-eight hours, upon an agreement by the steamship company, which was given, that the goods should be at the sole risk of that company, who would pay to the consignee or owner the value of such cargo respectively as might be stolen, burned or otherwise lost. Notice of the time and place of the discharge was then posted upon the bulletin board of the custom-house, in accordance with custom, but no notice was sent to C., nor did he have any notice. The cases and bales consigned to him were on the same day landed on the Inman pier, but he had no knowledge of it, and had no opportunity to remove the goods on that day; and, if he had had such knowledge, there was not sufficient time for him to have entered, paid the duties, obtained the permits for their removal and removed them. On the night of that day the goods were destroyed by fire, without any imputed negligence to the National Steamship Company. *Held*, (1) that the stipulation in the bill of landing that respondent should not be liable for a fire happening after unloading the cargo was reasonable and valid; (2) that the discharge of the cargo at the Inman pier was not in the eye of the law a deviation such as to render the carrier an insurer of the goods so unladen; (3) that if any notice of such unloading was required at all, the bulletin posted in the custom-house was sufficient under the practice and usages of the port of New York; (4) that libellants, having taken no steps upon the faith of the cargo being unladen at respondent's pier, were not prejudiced by the change; (5) that the agreement of the respondent with the collector of customs to pay the consignee the value of the goods was not one of which the libellants could avail themselves as adding to the obligations of their contract with respondent. *Constable* v. *National Steamship Co.*, 51.

2. If a railroad company, for its own convenience and the convenience of its customers, is in the habit of issuing bills of lading for cotton delivered to a compress company, to be compressed before actual delivery to the railroad company, with no intention on the part of the shipper or of the carrier that the liability of the carrier shall attach before delivery on its cars, and the cotton is destroyed by fire while in the hands of the compress company, the railroad company is not liable for the value of the cotton, so destroyed, to an assignee of the bill of lading without notice of the agreement and course of dealing between the shipper and the carrier. *Missouri Pacific Railway Co.* v. *McFadden*, 155.

3. It is the duty of a carrier who offers barges for service to have them often examined and thoroughly inspected, so as to be sure of their condition. *Northern Belle* v. *Robson*, 571.

CONFLICT OF LAWS.

See ADMIRALTY, 2, 3.

CONSTITUTIONAL LAW.

1. A judgment of the highest court of a State, by which the purchaser, at an administrator's sale under order of a probate court, of land of a living person, who had no notice of its proceedings, is held to be entitled to the land as against him, deprives him of his property without due process of law, contrary to the Fourteenth Amendment of the Constitution of the United States, and is reviewable by this court on writ of error. *Scott* v. *McNeal*, 34.

2. This company was incorporated under an act of the legislature of Kentucky, approved February 17, 1846, with authority to construct a bridge across the Ohio at Cincinnati. The third section of the act required its confirmation by the State of Ohio, before the corporation should open its books for subscription; and the eighth section declared that "the president and directors shall have the rights to fix the rates of toll for passing over said bridge, and to collect the same from all and every person or persons passing thereon, with their goods, carriages or animals of every description or kind; provided, however, that the said company shall lay before the legislature of this State a correct statement of the costs of said bridge, and an annual statement of the tolls received for passing the same, and also the cost of keeping the said bridge in repair, and of the other expenses of the company; and the said president and directors shall, from time to time, reduce the rates of toll, so that the net profits of the said bridge shall not exceed fifteen per cent per annum, after the proper deductions are made for repairs and charges of other descriptions." By an act of the legislature of Ohio, enacted March 9, 1849, this company was made a body corporate and politic of that State, "with the same franchises, rights and privileges, and subject to the same duties and liabilities," as were specified in its original incorporation. Some subsequent legislation took place not affecting the matter in issue here. The bridge was completed in 1867 at a cost much in excess of what had been contemplated, and has never earned 15 per cent on its cost. On the 31st of March, 1890, the legislature of Kentucky enacted that it should be unlawful to charge, collect, demand or receive for passage over the bridge spanning the Ohio River, constructed under such act of incorporation, any toll, fare or compensation greater than, or in excess of, certain rates prescribed by the act, which were much less than the directors had fixed upon under the eighth section of the act of incorporation,

and made it obligatory upon the company to maintain an office and sell tickets in Kentucky at those rates. The company refusing to comply with the requirements of this act, an indictment was found against it. This was demurred to, and such proceedings were had thereafter that the defendant was adjudged guilty and fined $1000, and the judgment was sustained as constitutional by the Court of Appeals of the State. The case being brought here by writ of error, it is by the whole court *Held*, that the Kentucky act of March 3, 1890, in its effect upon the Bridge Company, violated the provisions of the Constitution of the United States.

3. The judges concurring in the opinion of the court, (BROWN, HARLAN, BREWER, SHIRAS and JACKSON, JJ.,) after reviewing in detail the course of the decisions, announce the following as their grounds for concurring in this result and in the judgment: (1) That the traffic across the river was interstate commerce; (2) that the bridge was an instrument of such commerce; (3) that the statute was an attempted regulation of such commerce, which the State had no constitutional power to make; (4) that Congress alone possesses the requisite power to enact a uniform scale of charges in such a case, the authority of the State being limited to fixing tolls on such channels of commerce as are exclusively within its territory.

4. The minority of the court (consisting of FULLER, C. J., and FIELD, GRAY and WHITE, JJ.) gave the reasons for their concurrence in the result and the judgment as follows: (1) The several States have the power to establish and regulate ferries and bridges, and the rates of toll thereon, whether within one State, or between two adjoining States, subject to the paramount authority of Congress over interstate commerce. (2) By the concurrent acts of the legislature of Kentucky in 1846, and of the legislature of Ohio in 1849, this bridge company was made a corporation of each State, and authorized to fix rates of toll. (3) Congress, by the act of February 17, 1865, c. 39, declared this bridge "to be, when completed in accordance with the laws of the States of Ohio and Kentucky, a lawful structure;" but made no provision as to tolls; and thereby manifested the intention of Congress that the rates of toll should be as established by the two States. (4) The original acts of incorporation constituted a contract between the corporation and both States, which could not be altered by the one State without the consent of the other. *Covington & Cincinnati Bridge Co.* v. *Kentucky*, 204.

5. Without passing upon the validity of the 5th and 14th sections of the act of the legislature of Texas of April 3, 1891, establishing a railroad commission with power to classify and regulate rates, the remainder of the act is a valid and constitutional exercise of the state sovereignty, and the commission created thereby is an administrative board, created for carrying into effect the will of the State, as expressed by its legislation. *Reagan* v. *Farmers' Loan & Trust Co.*, 362.

6. A citizen of another State who feels himself aggrieved and injured by the rates prescribed by that commission may seek his remedy in equity against the commissioners in the Circuit Court of the United States in Texas, and the Circuit Court has jurisdiction over such a suit under the statutes regulating its general jurisdiction, with the assent of Texas, expressed in the act creating the commission. Such a suit is not a suit against the State of Texas. *Ib.*

7. It is within the power of a court of equity in such case to decree that the rates so established by the commission are unreasonable and unjust, and to restrain their enforcement; but it is not within its power to establish rates itself, or to restrain the commission from again establishing rates. *Ib.*

8. The act of the legislature of Indiana of March 6, 1891, concerning taxation is not obnoxious to the constitutional objections made to it, since the Supreme Court of that State has decided: (1) That the constitution of that State authorizes such a method of assessing railroad property, which decision is binding on this court; and (2) that the act gives the railroad companies the right to be heard before final determination of the question, which construction is conclusive on this court; and, further, since (3) a tax law which grants to the taxpayer a right to be heard on the assessment of his property before final judgment provides a due process of law for determining the valuation, although it makes no provision for a rehearing. *Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co.* v. *Backus*, 421.

See INTERSTATE COMMERCE COMMISSION, 1, 4, 7, 8, 9;
TAX AND TAXATION, 1, 2;
TEXAS RAILROAD COMMISSION, 1, 2.

CONTEMPT.

See INTERSTATE COMMERCE COMMISSION, 10.

CONTINENTAL ARMY.

The acceptance by a supernumerary officer in the Continental line of an appointment in the regiment of guards authorized by the State of Virginia took him out of the line and put him into the new organization. *Williams* v. *United States*, 648.

CONTRACT.

1. A stipulation between a telegraph company and the sender of a message, that the company shall not be liable for mistakes in the transmission or delivery of a message, beyond the sum received for sending it, unless the sender orders it to be repeated by being telegraphed back to the originating office for comparison, and pays half that sum in addition, is reasonable and valid. *Primrose* v. *Western Union Telegraph Co.*, 1.

2. The appellant has failed to prove the renewal of his contract with the appellee, which alleged renewal is the foundation of the remedy sought for by his bill. *Smith* v. *Washington Gas Light Co.*, 559.
3. When a charter party provides that the hirer of the vessel need not make good any loss arising from ordinary wear and tear, a finding by the court that repairs sued for resulted from ordinary wear and tear is a bar to recovery. *White* v. *United States*, 661.
4. Money paid to a person on a vessel chartered to the government by the owner of the vessel cannot be recovered from the United States unless authorized by them. *Ib.*
5. A contract with the United States for the delivery of postage stamps to it construed. *Continental Bank Note Co.* v. *United States*, 671.

See ADMIRALTY, 8;
COMMON CARRIER, 1, 2;
CONSTITUTIONAL LAW, 2.

CRIMINAL LAW.

1. An indictment for murder which charges that the offence was committed on board of an American vessel on the high seas, within the jurisdiction of the court and within the admiralty and maritime jurisdiction of the United States, sufficiently avers the locality of the offence. *St. Clair* v. *United States*, 134.
2. An indictment which charges that A, B and C, acting jointly, killed and murdered D, is sufficient to authorize the conviction of one, though the others may be acquitted. *Ib.*
3. A charge in an indictment that the accused did then and there, piratically, wilfully, feloniously and with malice aforethought, strike and beat the said D, then and there giving to said D several grievous, damaging and mortal wounds, and did then and there, to wit, at the time and place last above mentioned, him, the said D, cast and throw from and out of the said vessel into the sea, and plunge, sink and drown him, the said D, in the sea aforesaid, sufficiently charges that the throwing into the sea was done wilfully, feloniously and with malice aforethought. *Ib.*
4. An indictment being found after the trial jury had been properly discharged, the court may order a *venire* to issue for persons to serve as jurors, and may further direct the marshal to summon talesmen. *Ib.*
5. Rule 63 of the court below is not inconsistent with any settled principle of criminal law, and does not interfere with the selection of impartial juries. *Ib.*
6. Circumstances attending a particular transaction under investigation by a jury, if so interwoven with each other and with the principal facts that they cannot well be separated without depriving the jury of proof that is essential in order to reach a just conclusion, are admissible in evidence. *Ib.*
7. On the trial under an indictment charging that A, B and C, acting

jointly, killed and murdered D, without charging that they were co-conspirators, evidence of the acts of B and C are admissible against A, if part of the *res gestæ*. *Ib.*

8. A party may show that the testimony of one of his witnesses has taken him by surprise, and that it is contrary to the examination of him preparatory to the trial, or to what the party had reason to believe that the witness would testify; or that the witness had been recently brought under the influence of the other party and had deceived the party calling him. *Ib.*
9. The certificate of the vessel's registry and proof that she carried the flag of the United States were properly admitted on the trial of this case, and established a *prima facie* case of proper registry under the laws of the United States, and of the nationality of the vessel and its owners. *Ib.*
10. When no exception is taken on the trial of a person accused of crime to the action of the court below on a particular matter, that action is not subject to review here, although the statutes and practice of the State in which the trial takes place provide otherwise. *Ib.*
11. In criminal proceedings all parts of the record must be interpreted together, so as to give effect to every part, if possible, and a deficiency in one part may be supplied by what appears elsewhere in the record. *Ib.*
12. The indictment in this case is sufficient. *United States* v. *Cook*, 555.

DAMAGES.

1. In an action by the sender of a cipher message against a telegraph company, which is not informed, by the message or otherwise, of the nature, importance or extent of the transaction to which it relates, or of the position which the plaintiff would probably occupy if the message were correctly transmitted, the measure of damages for mistakes in its transmission or delivery is the sum paid for sending it. *Primrose* v. *Western Union Telegraph Co.*, 1.
2. In an action by the representatives of a railroad employé against the company, to recover damages for the death of the employé, caused by an accident while in its employ, which is tried in a different State from that in which the contract of employment was made and in which the accident took place, the right to recover and the limit of the amount of the judgment are governed by the *lex loci*, and not by the *lex fori*. *Northern Pacific Railroad Co.* v. *Babcock*, 190.

DEED.

When a deed contains a specific description of the land conveyed, by metes and bounds, and a general description referring to the land as the same land set off to B, and by B afterwards disposed of to A, the second description is intended to describe generally what had been

before described by metes and bounds; and if, in an action of ejectment brought by a grantee of A, as plaintiff, the description by metes and bounds does not include the land sued for, it cannot be claimed under the general description. *Prentice* v. *Northern Pacific Railroad Co.*, 163.

EQUITY.

1. When two parties acquire title to the same tract of land from the same grantor, if the later grantee takes his deed with knowledge that the first grantee is in possession of the land, and has enclosed it, and is cultivating it, he is chargeable with knowledge of all the equitable rights of the first grantee with which an inquiry would have put him in possession. *Horbach* v. *Porter*, 549.
2. To justify a decree for the specific performance of a parol contract for the sale of real estate, the contract sought to be enforced, and its performance on the part of the vendee must be clearly proved; and in this case it is not so proved in several particulars. *Rogers Locomotive Works* v. *Helm*, 610.
3. In a suit in equity to set aside a sale of personal property as induced by false representations, a decree in favor of the plaintiff will be sustained if the representations proved are of the same general character as those averred in the bill, though not in its precise language. *Turner* v. *Ward*, 618.
4. The court, being satisfied that the various matters detailed in the opinion were part and parcel of a scheme devised to hinder and delay creditors in the collection of their debts, affirms the decree of the court below in this case. *Woodfolk* v. *Seddon*, 658.

See CONSTITUTIONAL LAW, 5.

EVIDENCE.

See CRIMINAL LAW, 6, 8, 9;
LOCAL LAW, 2;
INTERSTATE COMMERCE COMMISSION, 7.

EXCEPTION.

See CRIMINAL LAW, 10.

EXECUTOR AND ADMINISTRATOR.

A court of probate, in the exercise of its jurisdiction over the probate of wills and the administration of the estates of deceased persons, has no jurisdiction to appoint an administrator of the estate of a living person; and its orders, made after public notice, appointing an administrator of the estate of a person who is in fact alive, although he has been absent and not heard from for seven years, and licensing the administrator to sell his land for payment of his debts, are void, and

the purchaser at the sale takes no title, as against him. *Scott* v. *McNeal*, 34.

See CONSTITUTIONAL LAW, 1.

FORT DEARBORN ADDITION TO CHICAGO.

1. Under the operation of the act of the legislature of Illinois of February 27, 1833, for the making and recording of town plats, the interest in and control of the United States over the streets, alleys and commons in the Fort Dearborn addition to Chicago ceased with the record of the plat thereof and the sale of the adjoining lots. *United States* v. *Illinois Central Railroad Co.*, 225.
2. When a resort is made by individuals, or by the government of the United States to the mode provided by the statute of a State where real property is situated, for the transfer of its title, the effect and conditions prescribed by the statute will apply, and such operation will be given to the instrument of conveyance as is there designated. *Ib.*

INDICTMENT.

See CRIMINAL LAW, 1, 2, 3, 4, 12.

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, 2;
INTERSTATE COMMERCE COMMISSION.

INTERSTATE COMMERCE COMMISSION.

1. The twelfth section of the Interstate Commerce Act authorizing the Circuit Courts of the United States to use their process in aid of inquiries before the Commission established by that act, is not in conflict with the Constitution of the United States, as imposing on judicial tribunals duties not judicial in their nature. *Interstate Commerce Commission* v. *Brimson*, 447.
2. A petition filed under that section in the Circuit Court of the United States against a witness, duly summoned to testify before the Commission, to compel him to testify or to produce books, documents and papers relating to the matter under investigation before that body, makes a case or controversy to which the judicial power of the United States extends. *Ib.*
3. As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, the power conferred upon the Interstate Commerce Commission to require the attendance and testimony of witnesses and the production of books, papers and documents relating to a matter under investigation by it, imposes upon any one summoned by that body to appear and testify the duty of appearing and testifying, and upon any one required to produce such books, papers and documents the duty of producing them, if the

testimony sought and the books, papers, etc., called for relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused by the law on some personal ground from doing what the Commission requires at his hands. *Ib.*

4. Power given to Congress to regulate interstate commerce does not carry with it authority to destroy or impair those fundamental guarantees of personal rights that are recognized by the Constitution as inhering in the freedom of the citizen. *Ib.*
5. It was open to each of the defendants in this proceeding to contend before the Circuit Court that he was protected by the Constitution from making answer to the questions propounded to him or that he was not bound to produce the books, papers, etc., ordered to be produced, or that neither the questions propounded nor the books, papers, etc., called for related to the particular matter under investigation, nor to any matter which the Commission was entitled under the Constitution or laws to investigate. This issue being determined in their favor by the court below, the petition of the Commission could have been dismissed upon its merits. *Ib.*
6. *Hayburn's Case,* 2 Dall. 409; *United States* v. *Ferreira,* 13 How. 40; *Todd's Case,* 13 How. 52; *Gordon* v. *United States,* 117 U. S. 697; *In re Sanborn,* 148 U. S. 222, examined and distinguished. *Ib.*
7. The inquiry whether a witness before the Commission is bound to answer a particular question propounded to him, or to produce books, papers, etc., in his possession and called for by that body, is one that cannot be committed to a subordinate administrative or executive tribunal for *final* determination. Such a body could not, under our system of government, and consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment. *Ib.*
8. Except in the particular instances enumerated in the Constitution, and considered in *Anderson* v. *Dunn,* 6 Wheat. 204, and in *Kilbourn* v. *Thompson,* 103 U. S. 168, 190, of the exercise by either house of Congress of its right to punish disorderly behavior upon the part of its members, and to compel the attendance of witnesses, and the production of papers in election and impeachment cases, and in cases that may involve the existence of those bodies, the power to impose fine or imprisonment in order to compel the performance of a legal duty imposed by the United States can only be exerted, under the law of the land, by a competent judicial tribunal having jurisdiction in the premises. *Ib.*
9. A proceeding under the twelfth section of the Interstate Commerce Act is not merely ancillary and advisory, nor is its object merely to obtain an opinion of the Circuit Court that would be without operation upon the rights of the parties. Any judgment rendered will be a final and indisputable basis of action as between the Commission

and the defendant, and furnish a precedent for similar cases. The judgment is none the less one of a judicial tribunal dealing with questions judicial in their nature and presented in the customary forms of judicial proceedings, because its effect may be to aid an administrative or executive body in the performance of duties legally imposed upon it by Congress in execution of a power granted by the Constitution. *Ib.*

10. The issue made in such a case as this is not one for the determination of a jury, nor can any question of contempt arise until the issue of law in the Circuit Court is determined adversely to the defendants, and they refuse to obey, not the order of the Commission, but the final order of the court. In matters of contempt a jury is not required by due process of law. *Ib.*

JUDGMENT.

See TAX AND TAXATION, 2.

JURISDICTION.

A. OF THE SUPREME COURT.

1. This court has no jurisdiction to review by writ of error a judgment of the highest court of a State, as against a right under the Constitution of the United States, if the right was not claimed in any form before judgment in that court. *Morrison* v. *Watson*, 111.
2. It is for the Supreme Court of the State of Virginia to construe the statute of that State which provides that "any person duly authorized and practising as counsel or attorney at law in any State or Territory of the United States, or in the District of Columbia, may practise as such in the courts of this State," and to determine whether the word "person," as therein used, is confined to males, and whether women are admitted to practise law in that Commonwealth. *In re Lockwood, Petitioner*, 116.
3. When the laws of a State create a tribunal for the correction and equalization of assessments, and provide that persons feeling aggrieved by a valuation may apply to such board for its correction, and confer upon the board power so to do, it is for the Supreme Court of the State to determine whether the statute remedy is exclusive or whether it is only cumulative; and its action in that respect raises no Federal question. *Northern Pacific Railroad Co.* v. *Patterson*, 130.
4. Several judgments severally held by different complainants who unite in the prosecution of a creditor's bill, cannot be added together to make the amount necessary to give this court appellate jurisdiction. *Hunt* v. *Bender*, 556.
5. No question under the 25th section of the Judiciary Act having been passed upon by the court below, this court has no jurisdiction over the judgment of the state court. *Davidson* v. *Starcher*, 566.

6. There being no exception to a ruling or to anything which took place at the trial, there is nothing in the record to be reviewed, and the judgment below is affirmed. *Weed* v. *Crane*, 570.
7. This court will not take jurisdiction over an interlocutory decree. *McCollum* v. *Howard*, 577.
8. To give this court jurisdiction over the judgment of the highest court of a State, brought here by writ of error, it must appear that some question under the 25th section of the Judiciary Act was made by the pleadings, or passed upon by the court. *Gray* v. *Coan*, 589.
9. A writ of error to a state court is dismissed because no question was decided by that court of which this court has jurisdiction under the 25th section of the Judiciary Act. *Davidson* v. *Connelly*, 589.
10. Dismissed because the amount in controversy does not give the court jurisdiction. *Jones* v. *Fritschle*, 590.
11. Dismissed for want of jurisdiction. *Allen* v. *Tarleton*, 596.
12. The finding by a state court that the facts on which a party relies to bring his case within a statute of the United States do not exist is no decision against the validity of that statute. *Crary* v. *Devlin*, 619.
13. Dismissed because the jurisdictional amount is not involved. *Bennett* v. *Butterworth*, 8 How. 124, distinguished. *Pittsburgh Locomotive Car Works* v. *Keokuk National Bank*, 626.
14. Until the record of a judgment in a state court which this court is called upon to examine discloses the question necessary to give it jurisdiction, this court cannot proceed. *Goodenough Horse-Shoe Manufacturing Co.* v. *Rhode Island Horse-Shoe Co.*, 635.
15. This court has no jurisdiction over a judgment of a state court when it does not appear that a Federal question was raised, and that it was either decided or necessarily involved in the judgment pronounced. *Hagar* v. *California*, 639.
16. An appeal to this court will not lie from the judgment of a Circuit Court in a proceeding by a creditor to prove his demand against the estate of a bankrupt. *Ingersoll* v. *Bourne*, 645.
17. The decree from which this appeal was taken was not a final decree. *Follansbee* v. *Ballard Paving Co.*, 651.
18. The court has no jurisdiction in this case. *Burr* v. *Meyers*, 654.
19. In cases brought here from state courts this court can only look beyond the Federal question when that has been decided erroneously. *McLaughlin* v. *Fowler*, 663.
20. No Federal question is raised in this case. *France* v. *Missouri*, 667.

See RECEIVER.

B. OF CIRCUIT COURTS.

See ADMIRALTY, 1;
CONSTITUTIONAL LAW, 4;
INTERSTATE COMMERCE COMMISSION, 2.

C. Of State Courts.

See Admiralty, 2, 3;
Jurisdiction, A, 2, 3.

D. Of Probate Courts.

See Executor and Administrator.

LEX LOCI.

See Damages, 2.

LIMITATION, STATUTES OF.

See Local Law.

LOCAL LAW.

1. An action of ejectment was brought in a state court of Alabama, in which the parties were the same, the lands sought to be recovered were the same, the issues were the same and the proof was the same as in this action. That case was taken to the Supreme Court of the State, and it was there held that, whilst the plaintiffs and those whom they represented had no legal right to bring an action of ejectment pending a life estate in the premises, yet, in view of a probate sale of the reversionary interest and the recorded title thereto, and of the payment of the purchase price into the estate and its distribution among the creditors of the estate, the heirs had an equitable right to commence a suit to remove the cloud on the title which the probate proceedings created; and, inasmuch as they had failed to do so during twenty years, their right of action was barred under the doctrine of prescription. The statutes of Alabama provide that two judgments in favor of the defendant in an action of ejectment, or in an action in the nature of an action of ejectment, between the same parties, in which the same title is put in issue, are a bar to any action for the recovery of the land, or any part thereof, between the same parties or their privies, founded on the same title. The plaintiffs, availing themselves of this statute, brought this suit. *Held*, that, although the judgment of this court might be, if the question were before it for original consideration, that the bar of the statute would only begin to run upon the death of the holder of the life estate, yet that, the court of last resort of the State having passed upon the questions when the bar of the statute of prescription began to be operative, and when the parties were obliged to bring their action, whether legal or equitable, those questions were purely within the province of that court, and this court was bound to apply and enforce its conclusions. *Balkam* v. *Woodstock Iron Co.*, 177.

2. In Illinois, a will probated in Virginia is as available in proof as if probated in Illinois. *Long* v. *Patton*, 573.

District of Columbia. *See* STATUTE OF FRAUDS.
Virginia. *See* JURISDICTION, A, 2.

MANDATE.

The mandate of this court in this case was fully complied with by the Court of Claims. *United States* v. *Atchison, Topeka &c. Railroad Co.*, 637.

MASTER AND SERVANT.

A common day laborer in the employ of a railroad company, who, while working for the company under the order and direction of a section "boss" or foreman, on a culvert on the line of the company's road, receives an injury by and through the negligence of the conductor and of the engineer in moving and operating a passenger train upon the company's road, is a fellow-servant with such engineer and such conductor, in such a sense as exempts the railroad company from liability for the injury so inflicted. *Northern Pacific Railroad Co.* v. *Hambly*, 349.

See RAILROAD, 1.

MEXICAN GRANT.

See PUBLIC LAND, 2, 3, 4, 5, 6.

MUNICIPAL BONDS.

1. The legislature of Iowa had power to authorize the city of Keokuk to subscribe for and take stock in a railway company, to issue its bonds therefor and to lay a tax to pay the interest thereon. *Rogers* v. *Keokuk*, 546; *Same* v. *Lee County*, 547.
2. It had also power to give validity to bonds informally issued for such purpose. *Ib.*
3. A plaintiff who purchases such bonds in the open market is not chargeable with defects or irregularities in their issue. *Ib.*

PARTNERSHIP.

See WRIT OF ERROR, 3.

PATENT FOR INVENTION.

1. The reissue of June 10, 1884, by which the patent of May 8, 1883, to Joseph T. Dunham, for a combined tag and envelope, with an end flap covering the side of the envelope, was so enlarged as to include an envelope with a flap of any size or shape, is void. *Dunham* v. *Dennison Manufacturing Company*, 103.

2. The patent of November 24, 1885, to Joseph T. Dunham, for an improvement in tag envelopes, with a flap so constructed that it can be opened and the contents taken out without tearing the envelope or removing or breaking the fastenings, is not infringed by an envelope in which the flap is fastened down so that it cannot be opened without injury, and the contents are taken out by opening a flap at the opposite end of the envelope. *Ib.*

PRACTICE.

1. Dismissed by stipulation of counsel. *The Niagara* v. *Van Pelt*, 533.
2. A decree entered by consent of parties modifying the decree of the court below. *Coggeshall* v. *Hartshorn*, 533.
3. It appearing that this cause was brought here for delay only, the court dismisses it on motion of the defendant in error, and awards damages at the rate of ten per cent a year. *Watterson* v. *Payne*, 534.
4. A motion made by the plaintiff in error after the entry of such judgment to appear and for leave to file a brief comes too late. *Ib.*
5. Two records from the court below being docketed here in the same case and one being heard and disposed of by decree of reversal, the second is dismissed. *United States* v. *Osio*, 535.
6. The appellant was a proper party defendant in the court below, and duly took his appeal. *Connellsville & Southern Pennsylvania Railroad* v. *Baltimore*, 553.
7. The order assigning the case for hearing at this term is rescinded. *Ib.*
8. After a cause is at issue, and on the day when it is set for trial before a jury, it is too late to take a peremptory exception that a partner with plaintiff in the transaction sued on is not a party plaintiff. *Burbank* v. *Bigelow*, 558.
9. An objection in an action at law that the matter of plaintiff's demand is one of equitable cognizance in Federal courts cannot be taken for the first time in this court. *Ib.*
10. A certified question is answered coupled with a statement that, through subsequent legislation, it has ceased to be of any importance. *United States* v. *Stafford*, 590.
11. This case is dismissed without an opinion, as no exceptions appear to have been taken during the trial. *Bank of New Orleans* v. *Caldwell*, 592.
12. A judgment is entered according to the stipulation of the parties. *Woodman Pebbling Machine Co.* v. *Guild*, 597.
13. A bill of exceptions cannot bring up the whole testimony for review whether the case has been tried by the court, or by a jury. *Betts* v. *Mugridge*, 644.
14. The refusal of a charge asked for which is wholly immaterial is no ground for reversal. *Bank of Montreal* v. *White*, 669.

PRESCRIPTION.

See LOCAL LAW.

PRINCIPAL AND AGENT.

1. A loan was negotiated through a banker, who received the money from the lender, and failed before the borrower called for it. *Held*, on the facts disclosed by the proof, that he held it as the agent of the borrower. *Merriam* v. *Haas*, 542.
2. B., who had transactions with the appellees who were bankers, delivered to them his five promissory notes secured by mortgage. The appellant was also a creditor of B. and had a claim upon the fund in the appellees' hands. *Held*, (1) That the fact that the notes were in the possession of the appellees raised a legal presumption that they were their property; (2) that the weight of the evidence was in favor of the position that the appellees were to be first paid before transferring the notes to appellants. *Finley* v. *Isett*, 561.

PROBATE COURT.

See EXECUTOR AND ADMINISTRATOR.

PUBLIC LAND.

1. By the grant of public land made to the Northern Pacific Railroad Company by the act of July 2, 1864, c. 217, 13 Stat. 365, all mineral lands other than iron or coal are excluded from its operation, whether known or unknown: and all such mineral lands, not otherwise specially provided in the act making the grant, are reserved exclusively to the United States, the company having the right to select unoccupied and unappropriated agricultural lands in odd sections, nearest to the line of the road, in lieu thereof. *Barden* v. *Northern Pacific Railroad Co.*, 288.
2. Proceedings to obtain a Mexican grant in California commenced in 1845 and diligently prosecuted up to May, 1847, when judgment is rendered in the applicant's favor, and title issues to him, are held to be binding upon the United States, in the absence of fraud. *United States* v. *Olvera*, 538.
3. A plat made in 1853 of land adjudged to be covered by a Mexican grant, and confirmed in 1862, is sustained as the correct designation of the property covered by the grant. *United States* v. *De Haro*, 544.
4. After a careful examination of the proof relating to the identity of the appellants' ancestor with the grantee from the Mexican government, the court affirms the judgment of the court below, without deciding the questions of law. *Hardy* v. *Harbin*, 598.
5. The treaty of Guadaloupe Hidalgo had no relation to property within the State of Texas. *Basse* v. *Brownsville*, 610.
6. When it does not appear that a grant from the Mexican Republic had been deposited and recorded in the proper public office, among the public archives of the republic, this court must decide adversely to a claim under it. *Berreyesa* v. *United States*, 623.

RAILROAD.

1. A railroad company is bound to furnish sound machinery for the use of its employés, and if one of them is killed in an accident caused by a defective snow-plough, the right of his representative to recover damages therefor is not affected by the fact that some two weeks before he was sent out with the defective machinery, he had discovered the defect, and had notified the master mechanic of it, and the latter had undertaken to have it repaired. *Northern Pacific Railroad Co.* v. *Babcock*, 190.

2. Some alleged errors in the charge of the court below are examined and held to have no merit. *Ib.*

3. If an assessing board, seeking to assess for purposes of taxation a part of a railroad within a State, the other part of which is in an adjoining State, ascertains the value of the whole line as a single property and then determines the value of that within the State, upon the mileage basis, that is not a valuation of property outside of the State; and the assessing board, in order to keep within the limits of state jurisdiction, need not treat the part of the road within the State as an independent line, disconnected from the part without, and place upon that property only the value which can be given to it if operated separately from the balance of the road. *Cleveland, Cincinnati, Chicago & St. Louis Railway Co.* v. *Backus*, 439.

4. Where an assessing board is charged with the duty of valuing a certain number of miles of railroad within a State forming part of a line of road running into another State, and assesses those miles of road at their actual cash value determined on a mileage basis, this does not place a burden upon interstate commerce, beyond the power of the State, simply because the value of that railroad as a whole is created partly — and perhaps largely — by the interstate commerce which it is doing. *Ib.*

5. A railroad company which runs its line by telegraph, is bound to have a suitable telegraph line, with a proper number of operators, and in case of an accident it is for the jury to decide whether their duty in this respect has been performed. *Grand Trunk Railway Co.* v. *Walker*, 653.

See COMMON CARRIER, 2; CONSTITUTIONAL LAW, 3, 5; MASTER AND SERVANT; TAX AND TAXATION, 1, 2.

REBELLION.

1. A French vessel leaving France for New Orleans in May, 1861, with knowledge of the blockade, and obtaining full knowledge of the same at the Bahamas, continued its voyage and attempted to enter that port. *Held*, that it was subject to capture, and that so much of the cargo as belonged to citizens of New Orleans was subject to condemnation as enemy's property, and so much as belonged to citizens of

New York to condemnation for illicit trading with the enemy. *United States* v. *Hallock*, 537.

2. This court affirms after the close of the civil war, a judgment condemning a vessel and cargo for violation of the acts of July 13, 1861, c. 3, and August 6, 1861, c. 60, in transferring goods from Alexandria to a part of Virginia then in a state of insurrection. *Duvall* v. *United States*, 548.
3. The liability of the maker of a note given for the purchase of slaves before the civil war was not affected by their emancipation. *Holmes* v. *Sevier*, 582.

RECEIVER.

The removal or appointment of a receiver rests in the sound discretion of the court making the order, and is not revisable here. *Milwaukee & Minnesota Railroad* v. *Soutter*, 540; *Same* v. *Same*, 541.

STATUTE OF FRAUDS.

Part-performance of an oral contract for the conveyance of an interest in real estate in the District of Columbia takes it out of the operation of the statute of frauds, and authorizes a court of equity to decree a full and specific performance of it, if proved. *Riggles* v. *Erney*, 244.

STATUTE.

A. Statutes of the United States.

See Admiralty, 1;
Interstate Commerce Commission, 1, 2, 9;
Jurisdiction, A, 5;
Public Land;
Rebellion, 2;
Texas Railroad Commission, 1.

B. Statutes of States and Territories.

Alabama. *See* Local Law.
Illinois. *See* Fort Dearborn Addition to Chicago.
Indiana. *See* Constitutional Law, 6.
Kentucky. *See* Constitutional Law, 2.
Maryland. *See* Statute of Frauds.
Montana. *See* Jurisdiction, A, 3.
Ohio. *See* Constitutional Law, 2.
Texas. *See* Constitutional Law, 3; Texas Railroad Commission, 1.
Virginia. *See* Jurisdiction, A, 2.

TAX AND TAXATION.

1. When a railroad runs into or through two or more States, its value, for taxation purposes, in each is fairly estimated by taking that part of

the value of the entire road which is measured by the proportion of the length of the particular part in that State to that of the whole road. *Pittsburgh, Cincinnati, Chicago & St. Louis Railway Co.* v. *Backus*, 421.

2. The judgment of a state board empowered to fix a valuation for taxation, cannot be set aside by the testimony of witnesses that the valuation was other than that fixed by the board, where there is no evidence of fraud or of gross error in the system on which the valuations were made. *Ib.*
3. A mandamus is awarded commanding the levy of a tax. *Supervisors* v. *Durant*, 576.

See RAILROAD, 3, 4.

4. The right of a State to tax shares of stockholders in national banking associations within its limits is affirmed. *Van Slyke* v. *Wisconsin*, 581.

TELEGRAPH COMPANY.

See CONTRACT, 1;
DAMAGES, 1.

TEXAS RAILROAD COMMISSION.

1. The fact that the Texas and Pacific Railway Company is a corporation organized under a statute of the United States, receiving therefrom the corporate power to charge and collect tolls and rates for transportation, does not remove that company from the operation of the act of the legislature of Texas of April 3, 1891, establishing a railroad commission, as to business done wholly within the State; but such business is subject to the control of the State in all matters of taxation, rates and other police regulations. *Reagan* v. *Mercantile Trust Co.*, 413.
2. As the case does not present facts requiring it, no opinion is expressed on the power of the commission as to rates on points on the railway outside of Texas. *Ib.*

TRANSFER OF REAL ESTATE.

See FORT DEARBORN ADDITION TO CHICAGO.

TREATY OF GUADALOUPE HIDALGO.

See PUBLIC LAND, 5.

UNITED STATES.

See CONTRACT, 4;
FORT DEARBORN ADDITION TO CHICAGO.

WILLS.

See LOCAL LAW, 2.

WITNESS.

See INTERSTATE COMMERCE COMMISSION, 3.

WRIT OF ERROR.

1. A writ of error is fatally defective if it lacks the test required by law, and the defective writ cannot be amended here. *Moulder* v. *Forrest*, 567.
2. This court will not review a judgment in favor of a firm, if the writ of error does not name the persons who compose it. *Godbe* v. *Tootle*, 576.
3. Writs of error from this court must bear the test of the chief justice. *Germain* v. *Mason*, 587.
4. A writ of error to the highest court of a State must be allowed, either by a justice of this court, or a judge of that court. *Northwestern Union Packet Co.* v. *Home Insurance Co.*, 588.